

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3807 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SAROJBEN S CHRISTIAN

ASSISTANT TEACHER

Versus

STATE OF GUJARAT

Appearance:

MS. K.V.SHETH for MR RJ OZA for Petitioner

NOTICE SERVED for Respondent No. 1, 4

MR DD VYAS for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/05/98

ORAL JUDGEMENT

The petitioner is a Primary Teacher who has been retired from service on 11th August, 1987, on attaining the age of superannuation i.e. 58 years. This petition is preferred before the petitioner was retired from

service on 11th August, 1987. The petitioner was serving as an Assistant Teacher in the respondent No.3 school, which is a non-Government recognised Primary School. The petitioner claimed that she entered the service on 1st May, 1960, and the rules governing her service conditions, at the relevant time, did not impose any condition for compulsory retirement of a primary teacher, and as a matter of convention, the primary teachers were continued in service upto the age of 65 years. The petitioner, therefore, had a right to continue to serve as a Primary Teacher till she attained the age of 65 years. She has relied upon the Government instructions dated 15th March, 1964 (Annexure-A to the petition). The petitioner has also claimed that the respondent No.3 school had implemented Contributory Provident Fund Scheme, which it discontinued sometime in the year 1975. She has, therefore, prayed that the respondents should be directed to introduce either a Contributory Provident Fund Scheme or a pension scheme for the benefit of the primary teachers. This petition was admitted to final hearing on 14th December, 1987. This court (Coram : J.P.Desai J), made order as under :

" Rule. To be heard with Special CA No.4856/83 and Special CA No. 335/86. Mr. Oza states that the petitioner has already retired from service. In view of this, the question of granting interim relief does not survive "

Ms. K.V.Sheth, the learned advocate has appeared for the petitioner. She has submitted that the Government instructions dated 15th March, 1964, clearly stipulate that a primary teacher can be continued in service upto the age of 65 years and, therefore, there was no justification in retiring the petitioner on her attaining the age of 58 years. She has also submitted that as a matter of practice, the primary teachers were continued in service atleast till they attained the age of 65 years and even beyond that age. However, the petitioner has already retired from service and therefore she should be compensated for the lost services i.e. she should be paid arrears of salary for the period till the date she attained the age of 65 years.

It is not disputed that at the time when the petitioner entered into service, the Model Conditions of employment of Primary Teachers did not stipulate the age

of compulsory retirement, however, the said Conditions have since been amended time and again. Lastly it was amended under the Bombay Primary Education (Gujarat Amendment) Rules, 1978. The said Amendment Rules of 1978 were subject matter of challenge before this court in the matter of SHRI SAFAL KELEVANI MANDAL & ORS VS STATE OF GUJARAT & ORS. (1984 (2) GLR, 1488). In para-29 of the judgment, the court observed thus,

.... on the recognised principle of interpretation as set out above, the original provision of section 106 (2) before the amendment in 1970 ceases to exist and the new section supersedes it and becomes a part of the law just as if the amendment had always been there..."

In view of the above observation, it is now well settled that the provisions contained in Schedule "F" to the Bombay Primary Education Rules, 1949, would govern the service conditions of all the primary teachers including those who were already in service on the date of the amendment. Rule-34 of Schedule "F" provides for retirement of a primary teacher on attaining the age of 58 years. Thus, the petitioner who was serving as a Primary Teacher on the date of the amendment of 1978, would be governed by the terms and conditions contained in Schedule "F" to the Bombay Primary Education Rules, 1949, and is, thus, liable to be retired from service on attaining the age of 58 years. The action of the respondents in retiring the petitioner on attaining the age of 58 years, therefore, can not be interfered with as it is in consonance with the provisions contained in the Bombay Primary Education Rules. It is not disputed that prior to Gujarat Amendment of 1978 referred to hereinabove, no provision was made in respect of retirement of primary teachers. Considering the said position of law, this court, in the matter of JAYANTILAL RATILAL THAKKAR VS STATE OF GUJARAT & ORS. (XVI, GLR, 461), has held that " In the matter of security of tenure there is no statutory protection which a primary teacher or a Headmaster of a primary school run by a private body or a Trust enjoys....If he has no statutory right, he can not seek enforcement of a non-statutory right by invoking the Constitutional jurisdiction of the High Court". In view of the above judgment also, the petitioner could not have enforced the non-statutory right to continue in service upto the age of 65 years. The Government instruction dated 15th March, 1964, merely informs the

concerned Primary Education Officers that the salary of primary teachers continued in service beyond 65 years, would not be admissible for the purpose of grant. In my view, the said instructions do not confer any enforceable right upon the petitioner to continue in service upto the age of 65 years. Besides, the said instructions were issued under the then existing Rules which have been amended since then as discussed hereinabove.

To provide for a Contributory Provident Fund Scheme or a Pension Scheme is a matter of policy and the Court exercising its Constitutional jurisdiction under Article 226 of the Constitution, would not issue any direction to the respondents to introduce such scheme for the benefit of Primary Teachers as prayed for by the petitioner.

In view of the above discussion, the petitioner is not entitled to any of the reliefs prayed for. Petition is, therefore, , dismissed. Rule is discharged. There shall be no order as to costs.

JOSHI